

OPINION
46-56

March 23, 1946 (OPINION)

COUNTY TREASURER

RE: Term of Office

Your letter of March 30, re the above, has been handed to me for attention. This office has heretofore held under the law as it was prior to the effective date of the 1943 Code, which was January 20, 1945, that one who had been appointed to complete the term of a county treasurer, after the resignation of the elected treasurer who had served part of the term, was not thereby debarred from election to two successive terms thereafter. The writer of this letter was the writer of those opinions.

Before writing the opinions on that matter, I took occasion to examine the constitutional debates with reference to that provision in the constitution. From these it appears unmistakably that the constitutional provision was to prevent anyone holding the office of county treasurer indefinitely, whereby he might, if so inclined, get away with county money and cover it up by manipulating of the records. The constitutional convention seemed to feel that if the term of the treasurer were limited to four years or two successive terms, no treasurer would be able to make defalcations and prevent them being discovered for any great length of time. The other letters were written with what I think is a rather distinctive difference in conditions from those set forth in your letter. There the appointee had served but a few months under the appointment. Under the constitution he could hold the office for four years in succession. Suppose he had held as appointee for four months, after a vacancy in the office of the former treasurer. He clearly could be a candidate for the succeeding term. It would be an anachronism, it seems to me, to say that he could then be a candidate for only twenty months of the succeeding term.

Therefore, we have held that where an appointee has served after the resignation of a duly elected treasurer, he would not be debarred from serving two terms in succession, if elected thereto, after completing the former term under appointment. However, in this case, your county treasurer will have in effect served two complete terms upon the expiration of his present term under his second appointment. It is, therefore, our opinion that, having actually served two successive terms, he cannot be a candidate for the office and could not hold the office for the term next ensuing.

NELS G. JOHNSON

Attorney General